

**Paint America Services, Inc. and District Council
22, International Union of Painters and Allied
Trades, AFL-CIO, CLC. Case 7-CA-47564**

September 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS
WALSH AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on June 7 and July 1, 2004, respectively, the General Counsel issued the complaint on August 9, 2004, against Paint America Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the Act. The Respondent failed to file an answer.

On September 10, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On September 14, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by August 23, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 25, 2004, notified the Respondent that unless an answer was received by September 3, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Saline, Michigan, has been engaged in the construction industry as a painting contractor.

During calendar year 2003, a representative period, the Respondent, in conducting its painting operations de-

scribed above, purchased and received at its Saline, Michigan facility, goods and materials valued in excess of \$50,000 directly from other enterprises, including The Sherwin-Williams Company, located within the State of Michigan, each of which other enterprises had received those goods directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that District Council 22, International Union of Painters and Allied Trades, AFL-CIO, CLC, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since at least 1998 and at all material times, the Union has been the limited exclusive collective-bargaining representative of various employees employed by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 1998 through May 31, 2004, and which contains a grievance-arbitration procedure.

The employees described in article 1, section 3 of the collective-bargaining agreement constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times since at least 1998, based on Section 8(f) of the Act, the Union has been the limited exclusive representative of the unit.

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Jamile Randazzo	President
Sal Randazzo	Manager

About May 10, 2004, the Respondent discharged its employee George Lancaster.

The Respondent discharged Lancaster because he engaged in activities on behalf of the Union and in concerted activities, and to discourage employees from engaging in such activities.

About May 20, 2004, the Union, in writing, requested that the Respondent furnish it with the following:

- (1) A list of past and present employees for the past 12 months, including names, addresses, and phone numbers.
- (2) A list of all of the Respondent's jobsites within the Union's jurisdiction as described by the collective-bargaining agreement.

The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit employees.

Since about May 20, 2004, the Respondent has failed and refused to furnish the Union with the information requested by it.

CONCLUSIONS OF LAW

1. By discharging employee George Lancaster, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

2. By failing and refusing to furnish the Union with the information requested by it on about May 20, 2004, the Respondent has failed and refused to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its unit employees, in violation of Section 8(a)(5) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) of the Act by discharging George Lancaster, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to remove from its files all references to the unlawful discharge of George Lancaster, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with information that is necessary and relevant to its role as the limited exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on about May 20, 2004.

ORDER

The National Labor Relations Board orders that the Respondent, Paint America Services, Inc., Saline, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they engage in activities on behalf of District Council 22, International Union of Painters and Allied Trades, AFL-CIO, CLC, or any other labor organization, or because they engage in concerted activities.

(b) Failing and refusing to furnish the Union with information that is relevant and necessary to the performance of its duties as the limited exclusive collective-bargaining representative of the employees described in article 1, section 3 of the parties' June 1, 1998—May 31, 2004 collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer George Lancaster full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make whole George Lancaster for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of George Lancaster, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(d) Furnish the Union with the information it requested on about May 20, 2004.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Saline, Michigan, copies of the attached notice marked "Appendix."¹ Copies of the notice, on

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the Na-

forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 10, 2004.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

tional Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge employees because they engage in activities on behalf of District Council 22, International Union of Painters and Allied Trades, AFL-CIO, CLC, or any other labor organization, or because they engage in concerted activities.

WE WILL NOT fail and refuse to furnish the Union with information that is relevant and necessary to the performance of its duties as the limited exclusive collective-bargaining representative of the employees described in article 1, section 3 of our June 1, 1998—May 31, 2004 collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer George Lancaster full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make whole George Lancaster for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of George Lancaster, and WE WILL, within 3 days thereafter, notify him in writing that this has been done, and that the unlawful discharge will not be used against him in any way.

WE WILL furnish the Union with the information it requested on about May 20, 2004.

PAINT AMERICA SERVICES, INC.